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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,742	06/05/2000	Andrew S. Van Luchene	99-091	8655
22927	7590	01/06/2006	EXAMINER	
WALKER DIGITAL FIVE HIGH RIDGE PARK STAMFORD, CT 06905			GARG, YOGESH C	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/586,742

Applicant(s)

VAN LUCHENE ET AL.

Examiner

Yogesh C. Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 95-97 and 109-137 is/are pending in the application.
- 4a) Of the above claim(s) 109-137 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 95-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/21/2005.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Amendment received on 10/21/2005 is acknowledged and entered. The applicant has amended claims 95-97, canceled claims 98-108 and added new claims 109-137. Currently claims 95-97, and 109-137 are pending for examination.

Election/Restrictions

2. Newly submitted claims 109-137 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 109-111 directed to a method having, inter alia, the steps of receiving buyer information by a controller, determining by the controller seller information indicative of a plurality of products offered for sale by a plurality of sellers, determining, by the controller, that the product desired to be purchased by the buyers does not match any of the plurality of products offer for ale by the plurality of sellers, receiving by controller, after the determination that no match exits, additional seller information indicative of an additional product offered for sale by a seller have a ***different utility not required by the originally presented invention including claims 95-97.***

Similarly claims 112-137 directed to a method having, inter alia, the steps of searching, by a controller , through a plurality of seller database records associated with products offered for sale by sellers, determining, based on searching, that no seller database record corresponds to the buyer information, receiving, after determination that no seller database record corresponds to the buyer information, additional buyer information defining a commitment of the buyer to purchase the desired product, wherein the additional buyer information is indicative of a

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quality and a maximum price associated with the desired product, creating, after the receiving of the additional buyer information, a new seller database record and determining by the controller upon the occurrence of a pre-determined event that the additional buyer information corresponds to the new seller database record ***have a different utility not required by the originally presented invention including claims 95-97.***

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, newly presented claims 109-137 which are distinct from the invention originally claimed are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

- 3.1. Applicant's arguments (see Remarks, pages 13-14) filed on 10/21/2005 concerning amended claims 109-137 are moot in view of the withdrawal of these claims due to election by original presentation, as analyzed above.
- 3.2. Applicant's arguments (see Remarks, pages 12-14) filed on 10/21/2005 concerning amended claims 95-97 have been fully considered but are (a) moot due to new grounds of rejection necessitated due to current amendment and further (b) not persuasive because the cited reference of Ojha teaches determining, based on the one or more characteristics of the item, a quality class, as analyzed below.
- 3.3. This is a Final rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.1. Claims 95-97 are rejected under 35 U.S.C. 102(e) as being anticipated by Ojha et al.

(US Patent 6,598,026), hereinafter referred to Ojha.

Regarding claim 95, Ojha teaches a method, comprising:

receiving, via a computer network, seller offer information, the seller offer

information comprising information indicative of a seller, an item being offered for sale by the seller, a price at which the item is being offered for sale and one or more characteristics of the

item (see at least Fig.5, col.2, lines 47-62, "According to a specific embodiment, a web site is provided having individual private graphical user interfaces, e.g., **web pages, for buyers and sellers.**

... The buyer's interface allows him to search a proprietary database for current product information for a variety of products being offered for sale by a number of sellers. The product information includes, for example, the name of the seller and an ask price and/or a list price for the product as specified by the seller. ". Note: Fig.5 displays the seller offer

information for an IBM Laptop computer, a price at which the item is being offered for sale and also one or more characteristics, such as make, computer type, model, storage capacity, type of operating system, etc. See Fig.1 and col.8, line 49-col.line 8 which discloses the hardware environment of the invention in which the buyers [represented by the computers 122 and 124],

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sellers [represented by the computers /servers 108 & computers 114], server.[102] communicate via Internet [106] and their websites. Seller's information is received via Internet which includes the sellers offer, that is list price or ask price, see Fig.8.);

determining, based on the one or more characteristics of the item, a quality class of the item (As per the applicant's disclosure a quality class corresponds to different levels of item quality [see specification page 12, lines 3-4] and Ojha also teaches searching a proprietary database and sorting out the products by different levels of quality before presenting them on a graphical interface [see Fig.5 and col.37-45]. Ojha shows sorting out and presenting the products having different characteristics, that is model numbers, storage capacities, operating systems, etc. and prices and sorting them out from lowest quality, as represented by the lowest price of \$2198.99 to the highest quality level represented by the highest price of \$4152.28.

receiving buyer offer information, the buyer offer information indicative of a buyer, an item the buyer desires to purchase, a price the buyer is willing to pay for the item the buyer desires to purchase, and a desired quality class of the item (see at least col.3, lines 6-21, "*For each product saved in the shopping list a bid button is provided, activation of which causes a bid interface to be presented by which the buyer may submit a non-binding bid to the seller of that particular product. Alternatively, the bid interface may be in the shopping list itself. According to a specific embodiment, the bid is made available to a number of different sellers offering the same product. Using the shopping list, the buyer may make a number of bids for the same or different products to a number of different sellers simultaneously.* ". Submitting of non-binding bids by the buyer corresponds to receiving offer. See also col.4, lines 49-67 and col.5, lines 40-67 [teaches receiving conditional purchase offers from buyers with an offer price for a desired product]. See also col.15, lines 16-19 which teach receiving buyer details including e-mail address, and col.19, lines 5-11 discloses receiving the buyer's payment and shipping information from a

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database of previously collected information concerning the buyer. Col.9, lines 28-26 and Fig.4 shows the form on which the buyer can indicate a price he wants to pay for an item he wants to purchase and a quality class in the form of Model-Thinkpad 600 by specifying varying degrees of specificity and product criteria. Denoting the desired model with product specificities such as Thinkpad 600 denotes the level of the quality of Laptop computer the buyer is looking for.)

receiving credit card account information associated with the buyer (see at least col.21, lines 35-39, "a credit cardaccount may be requested before a party is allowed to negotiate..");

storing the seller offer information (see at least col.11, lines 5-8, " ..Activation of HTML text describing a product entry in the shopping list of interface 700 results in presentation of an interface 800 [fig.8] which provides information about all merchants offering the particular product for sale through the transaction site..." and buyer offer information (see at least, " col.10, lines 8-24, "a buyer can create and simultaneously maintain as many shopping lists as desired.... ". Note: The shopping lists stores the buyer's offer information and col.19, lines 5-11 discloses receiving the buyer's information from a database of previously collected information concerning the buyer);

determining, via a processor, whether the item desired for purchase by the buyer and the item being offered for sale by the seller correspond (see Ojha at least, col.4, lines 49-67, "...Thus, the present invention provides methods and apparatus for facilitating a transaction between a buyer and one of a plurality of sellers via the Internet. Product information relating to a plurality of products meeting product criteria specified by the buyer is presented via the Internet. One of the plurality of sellers is associated with each of the products. A first bid from the buyer for a first one of the plurality of products is made available via the Internet to a first seller associated with the first product. A first bid response is presented via the Internet to the buyer.", and col.8, line 49-col.9, line 18 which disclose the hardware/software that is used to implement the computerized transactions via Internet. Also, see col.9, lines 19-56 and col.14, lines 23-37. Note: The step of, after receiving the buyer's request for a product finding a seller meeting the buyer's product criteria and then

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getting a offer in response includes the claimed step of determining whether at least one item desired for purchase by a buyer and at least one item being offered for sale by a seller correspond.);

Regarding claim 96, Ojha discloses determining, that the item desired for purchase by the buyer and the item being offered for sale by the seller do not correspond and further comprising providing the buyer an opportunity to commit to buy the item desired for purchase by the buyer if a corresponding item being offered for sale can be found at a later time (see at least Figs. 2,2a, col.9, lines 10-18, " *FIG. 2 is a flowchart 200 illustrating facilitation of a transaction according to a specific embodiment of the invention. FIG. 2a is a flowchart illustrating a multi-step negotiation between a buyer and a seller (see 214 of FIG. 2) according to a more specific embodiment of the invention. FIGS. 3-18 are a series of graphical user interfaces which will be used to illustrate the transaction process of FIGS. 2 and 2a.* ", and col.18, lines 6-23, "***Where the seller's response is a counteroffer (254), the counteroffer price appears as a modified ask price in both the merchant's bid list of interface 1100 and the buyer's shopping list of interface 900 as shown in FIGS. 14 and 15, respectively. According to a specific embodiment, entries in the shopping list of interface 900 for which a response has been received from the seller are highlighted in a contrasting color as shown. Where the buyer does not accept the seller's counteroffer, he may adjust his bid by entering a new bid price as shown in FIG. 16. By activating the "Bid" button for that entry in his shopping list the buyer then submits an adjusted bid (258). Note that because the bid has been adjusted, it is treated like a new bid and the entry is no longer highlighted. Alternatively, the buyer may terminate negotiations with the seller at any time (260). In any case, where the buyer and seller have not yet agreed on a price (216), additional rounds of negotiating may take place as described above.*** ". Also see col.11, line 35-col.13, line 16. From the above excerpts it is clear that when the buyer, in Ojha, in response to the seller's list price bids a price lower than the list price for a specific desired product the item desired for purchase by the buyer

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and the item being offered for sale by the seller do not correspond. Further, when the system allows the buyer to submit a bid indicating a length of time that the bid is good till canceled by the buyer [see col.11, lines 35-46] and allows the sellers to either accept the bid or submit a counteroffer at a later time [so long the buyer does not cancel the bid] for the buyer to accept the counter offer corresponds to the applicant's claimed limitation providing the buyer an opportunity to commit to buy the item desired for purchase by the buyer if a corresponding item being offered for sale can be found at a later time .);

Regarding claim 97, Ojha teaches charging the credit card account associated with the buyer the price at which the at least one item is being offered for sale (See at least col.21, lines 30-40 which discloses consummating the deal and using a payment identifier, such as credit card to do so); and

crediting the seller an amount based on the price at which the at least one item is being offered for sale (see at least col.6, lines 5-10 and 21, lines 36-40 which teaches paying/crediting the seller using the payment identifier, which could be a credit card or a billing account).

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, ■ See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

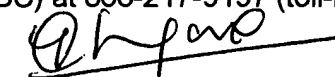
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
December 30, 2005.